Momentum

Journalism & Tech Task Force

Unraveling Copyright and the dilemmas posed by AI: a glossary for journalists

Technical Sheet

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On April 11, 2025, Jack Dorsey, founder and former CEO of Twitter, posted a statement on his profile that was endorsed by the platform's current owner, Elon Musk: "Eliminate all Intellectual Property law ."

The timing of Dorsey and Musk's comments is not random. The debate over Intellectual Property has always been relevant when considering the concept of an "open internet," but it has become even more important with the rise of Artificial Intelligence. Currently, there is a wave of lawsuits involving AI companies over Copyright violations related to the training data used for their tools. Companies like OpenAI and Anthropic face litigation around the world from newspapers, media companies and publishers who argue that their work was used without permission or compensation.

The rapid development of these tools and the actions of major tech platforms have profoundly reshaped social and economic dynamics, sparking debates about rights, responsibilities, and the regulation of these platforms. Among these debates, Copyright stands out as one of the most sensitive issues, especially for journalism.

Rooted in a logic of protecting and compensating content created by individuals, traditional Copyright frameworks are in direct conflict with the possibilities of machine-generated content and data scraping by bots. This conflict becomes more intense in light of the business models of big tech companies, whose global and disruptive operations make it challenging to apply local legal frameworks.

For journalism, which is facing deep crises of sustainability, the discussion around Copyright is central to the reflection on how to build a more sustainable, plural, and public-interest-driven media ecosystem. The content produced by news organizations is their most significant asset, and Copyright is precisely the tool that protects it. Any change in this paradigm, therefore, brings significant repercussions for the sector.

In Brazil, there is currently an open window for discussion on Copyright, driven by the Artificial Intelligence regulation bills under consideration in Congress. Aiming to create a more robust and suitable regulatory framework for digital platforms operating in the country, these bills may alter —either for better or worse—the Copyright paradigm in digital environments, with direct impacts on journalism.

With the goal of thinking strategically about these issues and contributing to innovative solutions that ensure journalism has the resources it needs to continue being one of the pillars of democracy, Momentum – Journalism & Tech Task Force has prepared this guide. It includes a glossary of key points from Brazil's Copyright Law to help journalists, editors, and publishers better navigate this debate, as well as an index of the main Copyright and journalism issues currently being discussed in Congress.

The Current Congress Discussion

Several bills proposing the regulation of digital platforms are currently under review in the Brazilian Congress. Among those with the most direct implications for journalism—particularly regarding the paradigm of content protection and compensation—Bill 2338/2023 stands out. Known as the "AI Bill," it is notable both for its provisions and for being, so far, the most widely debated and most advanced in terms of legislative progress.

In general, the bill seeks to establish guidelines for the development, implementation, and responsible use of AI systems in Brazil. Its aim is to protect fundamental rights, ensuring that AI systems are safe, transparent, and accountable, while promoting human dignity and democratic values.

The text, approved by the Senate in December 2024, is a substitute bill proposed by Senator Eduardo Gomes, based on the original bill submitted by the former President of the Senate, Rodrigo Pacheco. The substitute originated from a draft prepared by a commission of legal experts. Before reaching the Senate floor, the matter was extensively discussed by a temporary committee created to analyze the topic. Fourteen public hearings were held, with broad participation from civil society and various sectors (both public and private), as well as experts in technology and innovation. The bill is now under review in the Chamber of Deputies, where a special committee has been established to analyze it.

As for Copyright, the bill establishes a requirement for AI agents to compensate for the use of protected content. That is, for AI systems that are commercially available, the use of Copyright-protected material during development, training, or data mining processes will require compensation to the rights holders. The bill also states that this obligation would apply retroactively—meaning that rights holders whose content was previously "scraped" without authorization for AI training would be entitled to remuneration.

For news outlets—as well as research institutions, museums, libraries, archives, and organizations—this obligation is relaxed, provided certain criteria are met. According to the bill, Copyright-protected content may be used in the development of AI systems as long as the use is legitimate, non-commercial, and strictly limited to the purpose of the activity. This means that the primary goal of using such content cannot be to reproduce, display, or distribute it. The use must also not unjustifiably harm the economic interests of the rights holders—who retain the right to prohibit use of their content outside of these specified scenarios.

Still regarding Copyright, the bill also establishes that when AI systems use individuals' images and voices, such use must respect personality rights as defined by the Brazilian Civil Code. This implies the need for prior consent and the obligation to avoid harm to a person's honor, reputation, or privacy, with potential legal consequences for violations.

The Role of Copyright in the Bill

Even with the inclusion of provisions on the protection and compensation of Copyright-protected content in the bill, there is a significant chance that this part of the discussion may be fundamentally altered—or even removed altogether—during its review in the Chamber of Deputies. As was the case when the bill was still in the Senate, lawmakers remain deeply divided and hesitant to move forward with stricter regulations on Big Tech, whether due to the alleged potential economic impact such restrictions could cause, or because of the broader geopolitical issues involved in the operations of these corporations within the Brazilian market.

In this context, the requirement for platforms to compensate for the use of Copyright-protected content stands out as one of the most sensitive points under discussion. Given the significant financial impact this could have on companies—which, according to the bill, could even be held retroactively liable—there is strong mobilization and considerable opposition to the advancement of this proposal.

For the Copyright debate to move forward, it is essential that those in favor of its approval remain aware of what is at stake and stay actively engaged in the public debate. Beyond journalism, other cultural sectors—such as musicians and audiovisual producers—that are already being severely affected by the appropriation of their content, could suffer even greater harm if the current paradigm is maintained or further intensified.

Glossary of Copyright Concepts

To fully understand the impacts of Bill 2338/2023 and the discussions on AI in journalism, it is essential to understand the core concepts of Copyright law in Brazil. These terms are often mistakenly used as synonyms in debates, and they appear in publications by legislators or in posts by technology experts. Below, we present a glossary with the main terms and frameworks that guide content protection in Brazil, complemented by relevant examples from other countries.

- **Intellectual Property**

The definition provided by WIPO (World Intellectual Property Organization) describes Intellectual Property as referring to “creations of the mind, such as inventions; literary, artistic, and scientific works; designs; and symbols, names, and images used in commerce.” Within this vast universe of rights over the products of human creation, it is worth noting that Intellectual Property is made up of a series of subareas: Copyright, Patents, Registered Trademarks, Industrial Designs, Geographical Indications, and Trade Secrets.

Each of these subareas represents a legislative protection of Intellectual Property, ensuring that creators receive recognition and financial gains from their innovations, while also protecting the integrity of their creations and their rights as creators from being violated. The definition and system of Intellectual Property go beyond national and continental borders, having global reach and relevance. This system aims to ensure, on a global scale, a balance between the interests, rights, and recognition of creators and a rich, diverse ecosystem that serves the public interest by driving creativity and innovation.

- **Copyright**

The discussion about Copyright has spanned centuries of human history, bringing with it a series of disputes and questions that developed into many national and localized attempts to define the rights of creators over their works, their circulation, and their income. Finally, in 1886, the first guidelines were introduced to support a broad concept and regulation of Copyright. This event became known as the Berne Convention, which laid the foundation for and continues to influence numerous national and supranational legislations on the topic.

From this milestone, two main systems for structuring Authors' Rights were developed: Droit d'Auteur – the French or continental system – and Copyright – the Anglo-American system. Brazil adopted the Droit d'Auteur system, which is focused on the author's creative sphere, protecting, for example, the author's moral rights and their ideas, with a particular focus on the realm of creativity in all the ways it can be expressed. On the other hand, the Copyright model, adopted by other nations, deals with the right to reproduce copies, with greater concern for the material sphere of the work and its reproduction.

There are a number of practices that do not constitute Copyright infringement. The reproduction of a certain work is permitted as long as it follows certain required measures, such as being linked to educational and research purposes, nonprofit initiatives that do not harm the original work or the interests of its heirs, or for use as evidence in judicial or administrative proceedings. Reproductions that propose alternative forms of image representation can be carried out in the absence of any objection by the author or their heirs. Furthermore, any reproduction or citation must necessarily mention the author, the source, and the publication of the work.

Among other practices, paraphrases and parodies that do not reproduce the original work and do not discredit it should also be permitted. Finally, representations of works—through drawing, painting, photography, or other audiovisual representations—located in public spaces are authorized.

- **Authorship, Co-autorship, and Ownership**

Authorship refers to the natural person responsible for creating a literary, artistic, or scientific work, while co-authorship occurs when a given work is jointly created by two or more authors, and is granted to those who indicate their name, pseudonym, or conventional sign in the production. Therefore, co-authorship does not include those who merely assist the author in producing the work—through revision, editing, supervision, or presentation—but only those who are signatories and part of the creative process.

In contrast to authorship and co-authorship, the concept of ownership is linked to a broader sphere, in which the rights holder of the work may be either the author of an intellectual work—the so-called "original rights holder"—or a performer, an interpreter, a phonographic producer, and even a broadcasting company—the "derivative rights holders," who acquire ownership through contractual transfer or inheritance. In this sense, the ownership of Copyright is not limited to the creator of the work, but extends to those who obtain the rights to modify the work, whether by adapting it, translating it, arranging it, or orchestrating it.

A landmark example of this issue is the Millôr Fernandes Case (2016, Brazil). The journalist filed a lawsuit against Editora Abril after the launch of the "Veja 40 Years Digital Archive" project, which made old editions of Veja magazine available, including works by Millôr. He argued that he had not granted permission for his individual works to be included in the digital collective publication. The publisher, in turn, claimed that the content was part of the magazine's collective work. The Brazilian Supreme Court of Justice (STJ) ruled in favor of Millôr, reinforcing the protection of individual Copyright, even when the work is part of a collective set.

- **Author's Rights**

Author's Rights are divided into two areas: Moral Rights and Economic (Patrimonial) Rights. Moral Rights relate to the author's personality, and to the intimate sphere of the creation, dissemination, attribution, and protection of their work. These rights aim to ensure and preserve the bond between the work and its author, the author's control over how their work is circulated, their authority over any changes made to the work, and their access to rare or unique copies of their own production, regardless of who currently possesses them. In short, they seek to preserve the author's relationship with their work.

Economic Rights, on the other hand, pertain to the economic aspect of Author's Rights, dealing with the author's control over the material use of the work. These rights ensure that the author fully enjoys, uses, and disposes of their work, establishing the need for prior and express authorization before any changes, uses, or forms of distribution are made. Furthermore, these rights determine that the author is entitled to receive a portion of the earnings related to the valuation of their work in the market, through its availability for commercial use.

- **Publication, Reproduction, and Editing**

Publication refers to the act of making a work available to the public, with the proper consent of its author or any holder of the author's rights. Thus, publication involves establishing contact between the work and the public. Reproduction, on the other hand, consists of copying one or multiple copies of a given work, which can be done in any tangible form, including forms that may yet be invented. Editing, in relation to the concept of reproduction, concerns the exclusive right to reproduce the work, held by the figure of the editor. The editor has the duty to disseminate the work within the limits established by the publishing contract signed with the author or the Copyright holder.

- **Open Knowledge, Usage Licensing, and Creative Commons**

The concept of open knowledge is central to how the licensing of works and collections functions, as it encompasses free access, use, modification, and sharing of knowledge, striking a balance between the ideas of openness and attribution. Knowledge should be understood as a universal commons, meant to be accessible to everyone and built collectively.

Licensing is a way to make open knowledge viable while respecting the authorship and origin of the work. It is a form of Copyright transfer, consisting of the authorization for a third party to exploit a work within a specific time frame and under mutually agreed terms between the rights holder and the licensee. Once the license period ends, the right to exploit the work by the licensee ceases, and full rights revert to the original rights holder.

The Creative Commons project, within the licensing spectrum, aims to provide public licenses—that is, legal permissions that make certain works available to the public, facilitating access to knowledge without relying solely on traditional Intellectual Property rights. Various types of Creative Commons licenses are available, allowing different degrees of freedom—from distribution, adaptation, and remixing to the creation of derivative works and commercial use—depending on the license chosen. This expands the possibilities for the public to use and benefit from a work, requiring only proper citation of the original work and its authorship.

- **Public Domain**

What characterizes a work in the public domain is the absence of an exclusive rights holder, meaning that it may be used by anyone without the need for authorization from the author or payment for its use. A work enters the public domain after the Copyright protection period has expired, following the death of the author without heirs, or if the work is of unknown authorship. Under Brazilian law, this period is generally 70 years. Thus, the public domain is defined by the absence of ownership of a right—that is, of Copyright. It is also important to note that the public domain should not be confused with the concept of public property owned by the State.

- **Related Rights**

Related Rights, also known as "neighboring rights" in foreign legislation, are rights that are closely connected to but distinct from Copyright. These concern the rights of performing or interpreting artists, phonogram producers, and broadcasting companies in relation to a given work. They are linked to the sphere of dissemination, interpretation, or performance of the work, as opposed to the creative sphere covered by Copyright in Brazil.

Performing or interpreting artists have the right to authorize or prohibit the fixation of their performances—whether sound or audiovisual—as well as their reproduction, performance, and rental. These rights also extend to the broadcasting, public availability, or any other use of those fixed performances. Therefore, the artist's authorization and fair remuneration are required for the use of their artistic work.

In the case of phonogram producers and broadcasting companies, they also exercise the exclusive right to authorize or prohibit reproduction, distribution, public communication, and other forms of use of their content. In particular, broadcasters control the retransmission, reproduction, fixation, and public communication of their broadcasts.

- **Plagiarism and Counterfeiting**

Plagiarism is a legal concept that is not clearly defined in the Brazilian legislation and is still under development in terms of meaning. According to certain legal doctrines, it refers to the false attribution of the creation of a work or part of it, which involves the falsification of authorship. Thus, a plagiarist is someone who appropriates a work—or parts of a work—claiming authorship over it.

In contrast, counterfeiting is defined as the unauthorized reproduction of a work, which is commonly referred to as "piracy." In this case, there is no attempt to misrepresent the authorship, but rather an improper use of the work's economic value.

Copyright Law in Brazil

Brazil's Copyright Law—Law 9.610/1998—was enacted after a long period of uncertainty regarding regulation in this field, having undergone a series of changes and distinct legal frameworks. Starting with the 1891 Brazilian Constitution, all subsequent constitutions included provisions on Copyright, guaranteeing such rights—except for the 1937 Constitution, which was imposed during the "Estado Novo" authoritarian regime.

Throughout the 20th century, the development of this legal field was driven largely by the actions of associations and organizations advocating for Author's Rights. These groups demanded legal protections and were at the center of intense disputes. Over time, many of these disputes spanned various areas of human creativity and were shaped by fragmentation and centralization, heavily influenced by technological advances, market transformations, and their cultural and social implications.

The current legislation on Copyright in Brazil takes a sector-based approach, emphasizing strong and restrictive protection for authors, artists, and rights holders in the face of widespread transformation and fluidity in the communications landscape. The law is the result of a long, politically contentious process, ultimately built through collective efforts involving multiple sectors. Since its approval, the Brazilian legislation has been the subject of ongoing polarization, sparking repeated attempts at reform—both to strengthen protections and to reduce its scope, the latter based on arguments related to access to knowledge.

European Regulation

lIn recent years, the European Union has introduced new laws to regulate major platforms in the digital environment. Among these laws, the Digital Services Act (DSA), the Digital Markets Act (DMA), and the AI Act stand out.

The DSA regulates intermediaries and online platforms, aiming primarily to curb the spread of disinformation and illegal activities in the digital ecosystem, while promoting the protection of users' fundamental rights and a healthy, safe media environment. As such, it imposes a set of rules on how platforms and their algorithms operate, in addition to protective measures for their users.

The DMA, a complementary instrument to the DSA, is designed to regulate large platforms by establishing criteria to identify so-called "gatekeepers"—in this context, major digital platforms that provide essential services for the operation of other platforms. Once identified, these companies become subject to obligations, prohibitions, and penalties aimed at regulating their operations. The goal is to increase user choice and flexibility in digital navigation, as well as to support digital initiatives that are often obscured by dominant market dynamics.

Lastly, the AI Act represents the first legal proposal for the development, regulation, and establishment of guidelines for the use of Artificial Intelligence systems within the European Union. In this new context, the regulation is based on risk assessment, classifying AI models along a spectrum—from minimal risk to unacceptable risk—with the latter subject to protective or prohibitive measures, respectively. This proposal aims to curb and prohibit unethical, anti-competitive, and rights-violating activities involving AI by imposing rules and obligations related to transparency, compliance with Copyright guidelines, risk assessments, protective measures, and documentation requirements regarding how the models function. Many of the imposed measures apply not only to the providers of these systems, but also to their users, with the goal of creating a secure and protected environment.

All of these regulatory instruments move in the same direction: they impose obligations and promote accountability for platforms in cases of violations of the values upheld by the EU. These initiatives reflect international efforts to balance technological innovation with the protection of creators' rights, serving as a reference point for similar discussions in Brazil.

Understanding these concepts is essential not only for navigating legislative and judicial debates in Brazil but also for assessing how Brazilian journalism can protect its content, secure fair compensation, and ensure its sustainability and legitimacy in the face of emerging technologies. With this conceptual overview in place, we now turn to explore the strategic opportunities that arise from this discussion for Brazilian journalism, especially in the context of Artificial Intelligence and digital platforms.

Opportunities for Journalism

The debate around Copyright—especially in the context of Artificial Intelligence and digital platforms—presents not only challenges but also strategic opportunities for Brazilian journalism. Understanding concepts such as authorship, ownership, and compensation allows for the identification of paths to strengthen the financial sustainability of media outlets, protect the integrity of the content produced, and reaffirm journalism's role as a pillar of democracy.

The process known as the "digital transition" has severely impacted the media ecosystem. On one hand, revenue to finance journalism in the public interest has diminished—either because it has been dispersed among traditional outlets and digital-native ones, or because the logic of content distribution and advertising has been deeply reshaped by the business model of Big Tech companies. On the other hand, the increase in media outlets and voices in the public debate has brought challenges related to ensuring information integrity.

This dual crisis scenario is further intensified by the development and proliferation of generative Artificial Intelligence tools. This is due to the fact that the business model of the companies behind AI tools relies on the use of online content without recognizing authorship and/or providing fair compensation. Added to this mechanism is the fact that these companies and their technologies are mostly based in the Global North—which means that, in their design and operation, such tools are not only not tailored to the needs and specificities of the Global South, but also tend to reproduce and deepen North–South dominance dynamics. In this context, failing to prevent the operation of this logic of appropriation may represent a missed opportunity in the effort to secure resources and legitimacy for journalism.

From the perspective of sustainability, compensation for the use of journalistic content could become an important source of funding—one that could partially offset the loss of audience and advertising revenue resulting from the digitalization of information consumption. Struggling financially, the media ecosystem could have its democratic role reinforced through this new funding stream.

From the perspective of legitimacy, the capture of journalistic content without recognition of its social value may deepen journalism's loss of standing as a primary source of information. In Brazil, recent studies show that, especially among younger populations, social media has become the main tool for accessing information, including news and political content.

Given the centrality of this discussion to the future of journalism, it is essential that the Brazilian ecosystem is not only informed about the debate surrounding Copyright and the appropriation of content by platforms, but also actively engaged in defending its interests. The ongoing legislative discussion in Brazil, along with emblematic cases and international experiences, offers insights into how the sector can organize itself to ensure recognition and fair compensation for the use of its productions, while leveraging new technologies in an ethical and innovative way, and collectively proposing solutions that ensure financial sustainability, editorial independence, and continuity.

This document was translated using AI tools with human review.

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